STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of: Application for Certification For the Blythe Solar Power Project Palo Verde Solar, LLC	Docket No. 09-AFC-6

Energy Commission Staff's Pre-Hearing Conference Statement and Rebuttal Testimony

On April 30, 2010, the Committee assigned to this proceeding issued a Notice of Prehearing Conference and Evidentiary Hearing requiring all parties to file Prehearing Conference Statements by June 16, 2010, and specifying what information the prehearing conference statements must contain. Staff provides the requested information below.

a) The topic areas that are complete and ready to proceed to evidentiary hearings.

All topic areas are or will be complete and ready to proceed to evidentiary hearings. The Revised Staff Assessment did not include the cultural resources or socioeconomics sections or conclusions regarding the project's impact on airport safety and compliance with LORS related to the airport. These topics, along with supplemental information in Air Quality, Biological Resources, and Transmission System Engineering will be provided in a Supplemental Staff Assessment, tentatively scheduled to be filed on July 7, 2010. Staff may also provide responses to testimony filed by the applicant and California Unions for Reliable Energy (CURE) in this document as well.

b) The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefor.

All topic areas are or will be complete and ready to proceed to evidentiary hearing.

c) The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic.

Staff has received written testimony from the applicant and intervenor CURE. Based on the testimony of these parties, staff anticipates that the following areas will require adjudication:

Air Quality
Biological Resources
Cultural Resources
Land Use
Soil and Water Resources
Traffic and Transportation
Visual Resources
Waste Management
Worker Safety and Fire Protection

d) The identity of each witness sponsored by each party, the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; the time required to present direct testimony by each witness; and whether the party seeks to have the witness testify in person or telephonically.

The following expert witnesses will represent staff at the evidentiary hearings to testify and be available for cross examination in the following topic areas. Due to the likelihood that the State will not have a budget passed by the time the hearings are held, all staff witnesses will need to appear telephonically.

Air Quality
Witness: William Walters, P.E.
Summary of Testimony: Air Quality section of RSA
Qualifications: declaration and resume contained in section G of the RSA
Time required for direct testimony: 15 minutes

Biological Resources
Witness: Susan Sanders
Summary of Testimony: Biological Resources section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA

Witness: Carolyn Chainey-Davis
Summary of Testimony: Biological Resources section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA

Witness: Mark Massar, BLM
Summary of Testimony: Biological Resources section of the RSA
Qualifications: Declaration and resume inadvertently left out of the RSA, will be included in the Supplemental Staff Assessment
Time required for direct testimony: 2 hours for the entire Biological Resources panel

Witnesses from other wildlife agencies may also participate on the panel, including representatives from U.S. Fish and Wildlife Service and California

Department of Fish and Game. Staff will provide the names and resumes of any additional witnesses in the Supplemental Staff Assessment.

Cultural Resources
Witness: Beverly Bastion
Summary of Testimony: Testimony to be contained in the Supplemental Staff Assessment (Exh. 201)
Qualifications: Declaration and resume to be provided in the Supplemental Staff Assessment
Time required for direct testimony: One hour

Hazardous Materials Management
Witness: Alvin Greenberg, Ph.D.
Summary of Testimony: Hazardous Materials Management section of the RSA; Rebuttal testimony, attached.
Qualifications: Declaration and resume contained in section G of the RSA
Time required for direct testimony: 5 minutes

Land Use, Recreation and Wilderness
Witness: James Adams
Summary of Testimony: Land Use, Recreation and Wilderness section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA
Time required for direct testimony: 20 minutes

Soil and Water Resources
Witness: Michael Donovan, P.G., C.Hg.
Summary of Testimony: Soil and Water Resources section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA

Witness: Michael Daly, P.E.
Summary of Testimony: Soil and Water Resources section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA

Witness: John Thornton, P.E.
Summary of Testimony: Soil and Water Resources section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA
Time required for direct testimony: 2 hours for the Soil and Water Resources panel

Traffic and Transportation
Direct testimony will be presented in a panel format. The witness list has not been finalized, but will likely include William Walters, P.E., Mark Johnson, Alan Lindsey, James Jewell, Cliff Ho, as well as representatives from the California Department of Transportation, Aeronautics Division and possibly other Energy Commission staff as needed. The finalized witness list, along with declarations

and resumes, will be included in the Supplemental Staff Assessment. Staff anticipates needing 2 hours for direct testimony.

Visual Resources
Witness: Michael Clayton
Summary of Testimony: Visual Resources section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA
Time required for direct testimony: 30 minutes

Waste Management
Witness: Suzanne Phinney, D.Env.
Summary of Testimony: Waste Management section of the RSA
Qualifications: Declaration and resume contained in section G of the RSA
Time required for direct testimony: 15 minutes

Worker Safety and Fire Protection
Witness: Dr. Alvin Greenberg, Ph.D.
Summary of Testimony: Worker Safety and Fire Protection section of the RSA; Rebuttal testimony, attached.
Qualifications: Declaration and resume contained in section G of the RSA
Time required for direct testimony: 20 minutes

Staff witnesses in other areas can also be made available if it is determined at the prehearing conference that their presence at the evidentiary hearing is needed. For those matters not subject to dispute by the applicant or intervenors, staff proposes to enter testimony into the record by declaration. The testimony and the respective authors are identified below and declarations have been included in the RSA:

Environmental Assessment
Alternatives Evaluated – Susan V. Lee
Health and Safety – Alvin J. Greenberg, Ph.D.
Noise and Vibration – Shahab Khoshmashrab
Transmission Line Safety and Nuisance – Obed Odoemelam, Ph.D.

Engineering Assessment
Facility Design – Shahab Khoshmashrab
Geology, Paleontology, and Minerals – Patrick A. Pilling, Ph.D., P.E., G.E., D.GE.
Power Plant Efficiency – Erin Bright
Power Plant Reliability – Erin Bright
Transmission System Engineering – Laiping Ng and Mark Hesters

General Conditions Including Compliance Monitoring and Closure Plan – Mary Dyas

e) Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for each such cross-examination.

Staff would like to reserve the right to cross-examine witnesses in the following technical areas for the stated amount of time:

Air Quality
Applicant: 5 minutes

Biological Resources
Applicant: 1 hour
CURE: 15 minutes

Cultural Resources
To be determined

Land Use, Recreation and Wilderness
Applicant: 15 minutes

Soil and Water Resources
Applicant: 1 hour
CURE: 15 minutes

Traffic and Transportation
Applicant: 1 hour

Visual Resources
Applicant: 20 minutes

Waste Management
CURE: 20 minutes

Worker Safety and Fire Protection
Applicant: 20 minutes
CURE: 15 minutes

f) A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply.

The exhibit list is attached. Additional exhibits may also be added as staff reviews the other parties' testimony and prepares for hearings. Staff will identify any additional exhibits it may need to rely on in the Supplemental Staff Assessment.

g) Topic areas for which the Applicant will seek a commission override due to public necessity and convenience pursuant to Pub. Resources Code §25525.

Not applicable to staff.

h) Proposals for briefing deadlines, impact of vacation schedules, and other scheduling matters.

Staff counsel has a vacation planned for the beginning of September and hopes that all briefing will be concluded before then.

i) For all topics, any proposed modifications to the proposed Conditions of Certification listed in the Revised Staff Assessment (RSA) based upon enforceability, ease of comprehension, and consistency with the evidence.

Staff accepts the applicant's changes to the following conditions of certification:

TLSN-1
Waste-8
Waste-9
Worker Safety-8
TSE-1
Soil and Water-16

Staff also accepts some of the other changes to conditions proposed by the applicant, but not in their entirety and will provide proposed modifications in the Supplemental Staff Assessment.

DATED: June 16, 2010

Respectfully submitted,

/s/ Lisa M. DeCarlo_____

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Staff's Rebuttal Testimony
Blythe Solar Power Project
June 16, 2010

Hazardous Materials Management

Alvin Greenberg, Ph.D.

The applicant has proposed in written pre-filed testimony that staff's proposed Condition of Certification **HAZ-1** be revised to include a new list of the identity and volume of all hazardous materials that will be stored and used on the site. The new list is Table 5.6-3R. The applicant also points out that staff erred in its statement that a total of 1,300,000 gallons of heat transfer fluid (HTF) will be used and stored on-site. The 1.3M gal is for each power block, not the entire project.

Staff has no objection to the clarification or to accepting a revised list of hazardous materials. Staff does, however, object to Table 5.6-3R listing the amounts of hazardous materials by power block instead of the entire site. Staff would very much prefer that the maximum amount of each hazardous material that the applicant wishes to use and store on the entire site be listed. Staff feels that it is misleading to list the amount per power block as the entire site is contiguous, shares the same security perimeter, shares the same command and control systems, share the same fire suppression water loop, and are owned by the same company. As an example of how other regulatory agencies will treat this site, one Risk Management Plan will be required for the entire site (not each power block), one Hazardous Materials Business Plan will be required, and if it were under the jurisdiction of the U.S Department of Homeland Security Chemical Facility Anti-Terrorism Standards (6 CFR Part 27), the storage at the entire site would be considered as being present, not the amount at one power block.

Staff requests that the applicant revise Table 5.6-3R to reflect the total amounts of each hazardous material that will be used and stored on-site when the project is built to completion and all power blocks are operating.

Staff's Rebuttal Testimony
June 16, 2010

Blythe Solar Power Plant
Worker Safety/Fire Protection
Alvin Greenberg, Ph.D.

The Applicant, in pre-filed testimony, questions the need for staff's proposed Conditions of Certification **WORKER SAFETY-6, 7, and 8.** Proposed conditions **6** and **7** address emergency response access to the site and mitigation for direct and cumulative impacts to the Riverside County Fire Department (RCFD).

Staff takes issue with applicant's opening statement that "staff is assuming mitigation provisions that the RCFD has not yet decided to be needed from its standpoint". This statement runs contrary to fact: and staff has documented both the need and the opinion of the RCFD in the Revised Staff Assessment (RSA) since conversations began in January 2010. The applicant has failed to provide a single piece of evidence that supports its contention that staff has not based its findings for mitigation on anything other than the facts and the opinions of the RCFD.

Furthermore, the applicant now "requests the ability to continue to coordinate with the RCFD to establish the level of fire-related risk associated with the BSPP and determine the appropriate level of response capability commensurate with that risk and consistent with applicable safety regulations". The applicant has always had the ability to do this and continues to have the ability to discuss and negotiate with the RCFD now and in the future. That the applicant waited until now to talk with the RCFD makes resolution of this matter difficult and fraught with complexity.

WORKER SAFETY-6

The applicant asks that this proposed condition be revised to include a qualifying statement that a second access road would be provided <u>only</u> if the RCFD requests a second road. It is staff's opinion that the RCFD has unequivocally required a second access road for this project and all other solar projects within their jurisdiction. Staff can see no useful purpose in adding the qualifying language because staff believes that even in the event the applicant is somehow able to induce the RCFD to modify its position and not require a second access road, staff will continue to require such a road. As staff has pointed out in its Revised Staff Assessment, a second access road is necessary to ensure fire department access for emergency response. If the main access road or gate is blocked for whatever reason, the Blythe project would essentially be isolated. If a concurrent event, such as a fire, hazardous material spill, confined space or trench rescue, or medical emergency, were to occur at the Blythe power plant, the RCFD would not be able to respond in a timely manner. <u>Lives would be put at risk.</u> Furthermore, at the April 29, 2010 staff workshop in Palm Springs the applicant

indicated that a second access road from the east was feasible and agreed to provide one. The road would not have to be paved; an all-weather gravel road with culverts under the road where it crosses washes would be more than adequate. Staff also understands that a construction vehicle access road will come from the east to the project site and that this road will be only one (1) mile in length and therefore can be used as second access road. The applicant has not provided any reason why this road be used as a second access road.

WORKER SAFETY-7

This proposed condition requires mitigation of direct and cumulative project-related impacts to the RCFD. The applicant wishes to revise several parts of this condition in the following manner:

1. Additional time be allowed so that the applicant can prepare a Fire Risk Evaluation Plan and have it available to staff and the Committee prior to the decision.

2. The condition be changed to “allow more informed discussions with the RCFD” yet also fund $350,000 at start of construction (a portion of the $825,000 that the staff is proposing).

3. Revise the condition to require that an agreement with the RCFD must be executed or an independent consultant study be conducted and implemented by six months prior to the time HTF is delivered to the site (August 2012).

Staff is sympathetic to all parties who must deal with this very difficult issue of mitigation. However, CEQA requires staff to identify and propose appropriate mitigation and not defer mitigation to some later negotiation. While staffs strongly supports the project owner reaching an agreement with the SBCFD regarding funding of its project-related share of costs to provide appropriate mitigation of project-related impacts on fire protection, HazMat, rescue, and EMS services, it cannot abrogate its responsibility under CEQA to propose mitigation. Staff has also documented all the reasons that additional emergency response capability is needed for this extremely large solar power plant (~10 sq. miles of solar arrays) which, when completed and operational, will have on site approximately 5,400,000 gallons of highly flammable oxygenated fuel. This volume dwarfs the volume of fuels present in the refining and piping system of a moderate size petroleum refinery (not including the tank farm). And while staff appreciates the engineering and administrative safety measures (including shut-off valves) that will be implemented at the Blythe Solar Power Project, emergency response is the third leg of safety and the fire department must prepare for the contingency of failure of one or several safety systems. One need only look at the Gulf of Mexico catastrophe to understand the need for adequate response measures.

Staff cannot agree to the revisions to this condition proposed by the applicant. The applicant’s proposal places too much responsibility on Energy Commission staff post-

certification to identify and/or approve an independent consultant and report. Staff urges the applicant o negotiate with the RCFD or provide a basis for refuting the need for and/or amount of mitigation.

WORKER SAFETY-8

This proposed condition requires the project owner to develop and implement an enhanced Dust Control Plan to mitigate the potential for Valley Fever. The applicant has made a cogent argument for a modest revision to this condition and staff agrees with the revision as written by the applicant.

DECLARATION OF
Alvin J. Greenberg, Ph.D.

I, **Alvin J. Greenberg, Ph.D.** declare as follows:

1. I am presently a consultant to the California Energy Commission, Energy Facilities Siting and Environmental Protection Division.

2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.

3. I prepared the rebuttal testimony on **Hazardous Materials Management and Worker Safety/Fire Protection** for the **Blythe Solar Power Project** based on my independent analysis of the amendment petition, supplements hereto, data from reliable documents and sources, and my professional experience and knowledge.

4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue addressed therein.

5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 16, 2010 Signed: [signature]

At: Sacramento, California